

## EXHIBIT “C”

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Protection Group and Donna Cangelosi  
8

9  
10 UNITED STATES DISTRICT COURT  
11 DISTRICT OF NEVADA

12 —ooOoo—

13 In re: Case No. 2:07-cv-00892-RCJ-GWF  
14 USA COMMERCIAL MORTGAGE Bankr. Case No. 06-10725-LBR  
COMPANY, Adv. Proc. No.: 07-01076-LBR  
15 Debtor.

16 **CONSENT TO WITHDRAWAL OF**  
17 **THE REFERENCE PURSUANT TO**  
18 **28 U.S.C. § 157(d) AND REQUEST**  
19 **TO SET EXPEDITED HEARING**  
20 **TO DETERMINE WHETHER THE**  
21 **BANKRUPTCY COURT'S**  
22 **TEMPORARY STANDSTILL ORDER**  
23 **IN FAVOR OF COMPASS SHOULD**  
24 **BE CONVERTED TO A**  
25 **PRELIMINARY INJUNCTION AND**  
26 **TO SET EXPEDITED BRIEFING**  
27 **SCHEDULE**  
28 \_\_\_\_\_/

24 The Direct Lender Plaintiffs in Case No. 3:07-cv-00241 and Bankruptcy Adversary  
25 Proceeding No. 07-01076-LBR, all Nevada limited liability companies (collectively the  
26 "Plaintiffs"), together with interested parties the Lenders Protection Group (the "LPG")  
27 and Donna Cangelosi ("Cangelosi") in Case No. 2:07-cv-00892 and 2:07-cv-00894  
28 (Plaintiffs, the LPG and Cangelosi shall collectively be referred to herein as the "Direct

Lenders”), through their counsel, The Law Offices of Alan R. Smith, hereby: (1) submit this consent to withdrawal of the reference pursuant to 28 U.S.C. §157(d) for cause, such that all disputes between Direct Lenders and Compass USA SPE, LLC, Compass Partners, LLC, Compass Financial Partners, LLC and all related Compass entities (collectively “Compass”) be heard and adjudicated in this Court; and (2) request that this Court set an expedited hearing to determine whether the Bankruptcy Court’s temporary standstill order, which retroactively stays the Direct Lenders termination of Compass as their agent under certain Loan Servicing Agreements, should be continued as a preliminary injunction and to set an expedited briefing schedule on this issue, as detailed below.

**A.  
CONSENT TO WITHDRAWAL OF REFERENCE**

Direct Lenders consent to the withdrawal of reference, as recommended by the Bankruptcy Court, and submit to this Court that cause exists to withdraw the reference pursuant to 28 U.S.C. §157(d). In this regard, attached hereto as Exhibit A, is a Motion For Withdrawal Of The Reference Pursuant To 28 U.S.C. §157(d), filed by the Plaintiffs in case number Case No. 3:07-cv-00241, which the Direct Lenders hereby incorporate herein as if fully set forth.

**B.  
REQUEST FOR EXPEDITED HEARING ON WHETHER TEMPORARY  
STANDSTILL ORDER STAYING THE DIRECT LENDERS’ TERMINATION  
OF COMPASS’ AS THEIR AGENT SHOULD BE CONVERTED TO A  
PRELIMINARY INJUNCTION IN FAVOR OF COMPASS**

Direct Lenders ask this Court to, upon withdrawing the reference, set an immediate hearing and set an expedited briefing schedule to determine whether a certain temporary standstill order entered by the Bankruptcy Court on May 31, 2007, and extended on June 20, 2007, should be terminated or extended into a preliminary injunction under FRCP 65.

Specifically, on approximately May 15, 2007, Direct Lenders (as principals) served Compass (as their agent) with notices of the termination of their agency relationship/ loan servicing relationship. On May 31, 2007, the Bankruptcy Court retroactively stayed the

1 termination of Compass, pending further court order. *See Order Re: Emergency Motion*  
 2 *Of Compass Financial Partners LLC For Order Pursuant To 11 U.S.C. §§ 105 And 1141*  
 3 *Enforcing Confirmation Order And For Civil Contempt Sanctions*, a copy of which is  
 4 attached to as Exhibit B. The purpose of this standstill order was to temporarily preserve  
 5 the so-called "status quo" by retroactively staying termination of Compass. This stay was  
 6 only intended to last until it was determined which court had jurisdiction to resolve the  
 7 disputes between Direct Lenders and Compass, at which time Compass could bring a  
 8 motion for a preliminary injunction to enjoin its termination by Direct Lenders. T

9 he Bankruptcy Court's "temporary standstill" order was expressly intended to be  
 10 temporary. The Bankruptcy Court never considered or determined whether Compass  
 11 satisfied the requirements of FRCP 65 to obtain a formal temporary restraining order.  
 12 Nonetheless, the "temporary" order has now been in place for seven (7) weeks and  
 13 counting, without Compass ever being required to bear its burden of proof to establish its  
 14 entitlement to injunctive relief under FRCP 65, or otherwise. If Compass wants the  
 15 benefit of a preliminary junction pending a determination of their disputes with Direct  
 16 Lenders, Compass must bear and sustain its burdens as a party seeking preliminary  
 17 injunctive relief.

18 It is vital that this Court address the propriety of a continuing preliminary  
 19 injunction as soon possible. From the perspective of the Direct Lenders, they have been  
 20 forced to continue to use an agent/loan servicer that they have terminated. As will be  
 21 fully developed by Direct Lenders in briefing on this issue, there is no relevant law by  
 22 which a principal can be enjoined from terminating an agent. *See Restatement (Second)*  
 23 *of Agency*, § 118 & cmt. b (1984) ("The principal has power to revoke ... although doing  
 24 so is in violation of a contract between the parties and although the authority is expressed  
 25 to be irrevocable. A statement in a contract that the authority cannot be terminated by  
 26 either party is effective only to create liability for its wrongful termination."); *See also*  
 27 *General Bldg. Contractors Ass'n v. Pennsylvania*, 458 U.S. 375; 102 S. Ct. 3141 (1982).  
 28 The law simply will not compel two persons to continue an agency relationship against

1 the wishes of one of the parties, even if their contract provides otherwise. *See*  
2 Restatement (Second) of Agency, § 119, cmt. a. An agent's only remedy for an improper  
3 termination of an agency relationship is a claim for breach of contract, it may not enjoin  
4 its termination. *See Restatement (Second) of Agency*, §§ 168 & cmt. a, 386 & cmt. b.  
5 Thus, there is no basis in the law to restrain the Direct Lenders' May 15, 2007,  
6 termination of Compass as their agent.

7 Indeed, the Court's temporary standstill order does far more than preserve the  
8 status quo, as it purports to do. The order is tantamount to a form of mandatory  
9 injunction or the remedy of specific performance. Direct Lenders, as principals, are  
10 being forced to use an agent they do not want.

11 Even more problematic is the potential liability to Direct Lenders during this  
12 "temporary standstill" period. Direct Lenders are being bound by a plethora of  
13 management decisions by an terminated agent, Compass. Direct Lenders have significant  
14 concerns about being held liable for the actions of Compass, an agent they have  
15 terminated. At the very least, if Compass seeks a preliminary injunction, it will have the  
16 burden of proof to demonstrate that it is likely to succeed on the merits, that it will suffer  
17 irreparable injury, that its harm outweighs harm to Direct Lenders and, if it satisfies all  
18 other requirements, to post a bond in sufficient amount to cover all the potential harm to  
19 the Direct Lenders. *See Raich v. Ashcroft*, 352 F.3d 1222, 1227 (9<sup>th</sup> Cir. 2003). To  
20 date, Compass has enjoyed what is in essence a "temporary restraining order" without  
21 satisfying any of the requirements established under the Federal Rules.

22 Direct Lenders ask the Court to set a prompt hearing and also establish an  
23 expedited briefing schedule on the preliminary injunction issue, with Compass being  
24 required to first having the opportunity to file points and authorities to support a  
25 preliminary injunction in its favor, followed by an opposition of Direct Lenders, and reply  
26 of Compass.

27 ///

28 ///

1           Should Compass not pursue a temporary restraining order in this Court, Direct  
2 Lenders ask that this Court enter an order expressly providing that the "temporary  
3 standstill" order entered by the Bankruptcy Court is terminated.

4           DATED this 19th day of July, 2007.

5                                   LAW OFFICES OF ALAN R. SMITH

6                                   By: /s/ Kevin A. Darby, Esq.

7                                   ALAN R. SMITH, ESQ.  
8                                   KEVIN A. DARBY, ESQ.  
9                                   Attorney for Direct Lenders  
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# Exhibit "A"

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6  
7 Attorneys for Plaintiffs and  
Interested Parties the Lenders  
Protection Group and Donna Cangelosi  
8

9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF NEVADA

11 —ooOoo—

12 3685 SAN FERNANDO LENDERS,  
13 LLC, a Nevada limited liability company,  
5055 COLLWOOD LENDERS, LLC, a  
14 Nevada limited liability company, 6425  
GESS LENDERS, LLC, a Nevada  
15 limited liability company, 60<sup>th</sup> STREET  
VENTURES LENDERS, LLC, a Nevada  
16 limited liability company, AMESBURY  
HATTERS PT LENDERS, LLC, a  
17 Nevada limited liability company,  
ANCHOR B LENDERS, LLC, a Nevada  
18 limited liability company, BAR-USA  
LENDERS, LLC, a Nevada limited  
19 liability company, BAY POMPANO  
LENDERS, LLC, a Nevada limited  
20 liability company, BINFORD  
LENDERS, LLC, a Nevada limited  
21 liability company, BROOKMERE  
LENDERS, LLC, a Nevada limited  
22 liability company, BUNDY CANYON  
2.5 LENDERS, LLC, a Nevada limited  
23 liability company, BUNDY CANYON  
5.0 LENDERS, LLC, a Nevada limited  
24 liability company, BUNDY CANYON  
5.725 LENDERS, LLC, a Nevada  
25 limited liability company, BUNDY  
CANYON 7.5 LENDERS, LLC, a  
26 Nevada limited liability company,  
CABERNET LENDERS, LLC, a Nevada  
27 limited liability company, CASTAIC II  
LENDERS, LLC, a Nevada limited  
28 liability company, CASTAIC III

Case No. 3:07-cv-00241-ECR-VPC

**MOTION FOR WITHDRAWAL OF  
THE REFERENCE PURSUANT TO  
28 U.S.C. § 157(d)**

Law Offices of  
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505 Ridge Street  
Reno, Nevada 89501  
(775) 786-4579

H:\LPGiv Compass Partners\MOT wd ref.wpd

EXHIBIT "A"



1 LENDERS, LLC, a Nevada limited  
 2 liability company, CHARLEVOIX  
 3 LENDERS, LLC, a Nevada limited  
 4 liability company, CLEAR CREEK  
 5 PLANTATION LENDERS, LLC, a  
 6 Nevada limited liability company, COM  
 7 VEST LENDERS, LLC, a Nevada  
 8 limited liability company, COPPER  
 9 SAGE II LENDERS, LLC, a Nevada  
 10 limited liability company, CORNMAN  
 11 TOLTEC LENDERS, LLC, a Nevada  
 12 limited liability company, DEVALLE  
 13 LIVINGSTON LENDERS, LLC, a  
 14 Nevada limited liability company,  
 15 EAGLE MEADOWS LENDERS, LLC,  
 16 a Nevada limited liability company,  
 17 FIESTA MURIETTA LENDERS, LLC,  
 18 a Nevada limited liability company,  
 19 FIESTA USA STONERIDGE  
 20 LENDERS, LLC, a Nevada limited  
 21 liability company, FOXHILLS 216  
 22 LENDERS, LLC, a Nevada limited  
 23 liability company, GRAMERCY COURT  
 24 LENDERS, LLC, a Nevada limited  
 25 liability company, HARBOR  
 26 GEORGETOWN LENDERS, LLC, a  
 27 Nevada limited liability company,  
 28 HESPERIA LENDERS, LLC, a Nevada  
 limited liability company, HFA  
 CLEARLAKE I LENDERS, LLC, a  
 Nevada limited liability company, HFA  
 CLEARLAKE II LENDERS, LLC, a  
 Nevada limited liability company,  
 HUNTSVILLE LENDERS, LLC, a  
 Nevada limited liability company, LA  
 HACIDENDA LENDERS, LLC, a  
 Nevada limited liability company, LAKE  
 HELEN PARTNERS LENDERS, LLC,  
 a Nevada limited liability company,  
 LERIN HILLS LENDERS, LLC, a  
 Nevada limited liability company,  
 MARGARITA ANNEX LENDERS,  
 LLC, a Nevada limited liability company,  
 MARLTON SQUARE I LENDERS,  
 LLC, a Nevada limited liability company,  
 MARLTON SQUARE II LENDERS,  
 LLC, a Nevada limited liability company,  
 MOUNTAINHOUSE-PEGS LENDERS,  
 LLC, a Nevada limited liability company,  
 OAK SHORES II, LENDERS, LLC,  
 Nevada limited liability company,  
 OCEAN ATLANTIC  
 2.75 LENDERS, LLC, a Nevada limited  
 liability company, OCEAN ATLANTIC  
 9.425 LENDERS, LLC, a Nevada

1 limited liability company, PALM  
 2 HARBOR I LENDERS, LLC, a Nevada  
 3 limited liability company, SHAMROCK  
 4 TOWER LENDERS, LLC, a Nevada  
 5 limited liability company, SO CAL  
 6 LAND LENDERS, LLC, a Nevada  
 7 limited liability company, SVRB 2.325  
 8 LENDERS, LLC, a Nevada limited  
 9 liability company, SVRB 4.5  
 10 LENDERS, LLC, a Nevada limited  
 11 liability company, TAPIA RANCH  
 12 LENDERS, LLC, a Nevada limited  
 13 liability company, TEN-NINETY 4.15  
 14 LENDERS, LLC, a Nevada limited  
 15 liability company, THE GARDENS  
 16 2.425 LENDERS, LLC, a Nevada  
 17 limited liability company, THE  
 18 GARDENS LLC TSHR LENDERS,  
 19 LLC, a Nevada limited liability company,

20 Plaintiffs,

21 v.

22 COMPASS USA SPE, LLC, a Delaware  
 23 limited liability company, COMPASS  
 24 PARTNERS, LLC, a Delaware limited  
 25 liability company, DAVID BLATT, an  
 26 individual, and BORIS PISKUN, an  
 27 individual, SILAR ADVISORS, LP, a  
 28 Delaware limited partnership, SILAR  
 SPECIAL OPPORTUNITIES FUND,  
 LP, a Delaware limited partnership,

Defendants.

29 The above captioned Plaintiffs, all Nevada limited liability companies (collectively  
 30 the "Plaintiffs"), together with interested parties the Lenders Protection Group (the  
 31 "LPG") and Donna Cangelosi ("Cangelosi") (Plaintiffs, the LPG and Cangelosi shall  
 32 collectively be referred to herein as "Movants"), through their counsel, The Law Offices  
 33 of Alan R. Smith, hereby move this Court for an order withdrawing the reference pursuant  
 34 to 28 U.S.C. §157(d) such that all disputes between Movants and Defendants Compass  
 35 Compass USA SPE, LLC, Compass Partners, LLC, and related Compass entities  
 36 (collectively "Compass") be heard and adjudicated in this Court. This Motion is made for  
 37 cause under 28 U.S.C. §157(d) and is supported by the Recommendation For Withdrawal  
 38

1 Of The Referenced signed by the United States Bankruptcy Court, District of Nevada,  
 2 attached hereto as Exhibit A, and the following points and authorities.

3 **MEMORANDUM OF POINTS AN AUTHORITIES**

4 **I.**  
 5 **INTRODUCTION**

6 This Motion seeks an order of this Court withdrawing the reference of various  
 7 disputes between Movants and Compass from the bankruptcy case of USA Commercial  
 8 Mortgage Company ("USACM").<sup>1</sup> These disputes were originally brought before this  
 9 Court through Movant's *Complaint For Declaratory Relief And Damages*, filed herein on  
 10 May 21, 2007. However, Compass then attempted to bring the same disputes before the  
 11 Bankruptcy Court through: (1) a separate motion filed by Compass in the Bankruptcy  
 12 Court; and (2) a "Notice of Removal" of Movant's Complaint from this Court to the  
 13 Bankruptcy Court. Upon hearing Compass' Motion, the Bankruptcy Court held that  
 14 withdrawal of the reference in this case is proper and has entered a formal written  
 15 Recommendation For Withdrawal Of Reference Pursuant to 28 U.S.C. §157(d), which  
 16 attached hereto as Exhibit A.

17 Cause exists for this Court to accept the Bankruptcy Court's recommendation to  
 18 withdraw the reference as it applies to any disputes between Movants and Compass  
 19 because:

- 20 1. These disputes are between two non-bankruptcy debtors based on matters  
 21 occurring after the bankruptcy debtor's (USACM) Chapter 11 bankruptcy  
 22 plan was confirmed and effectuated;
- 23 2. The only relevant Bankruptcy Debtor, USACM, is not a party to these  
 24 disputes;
- 25 3. The resolution of these disputes will have no impact on USACM or its  
 26 bankruptcy estate;

27  
 28 <sup>1</sup>USACM is not a party to the disputes between Movants and Compass.

4. The disputes between Movants and Compass are predominated by non-core disputes between non-debtors and are predominated by issues of non-bankruptcy law;
5. Withdrawal of the reference will promote judicial economy because any bankruptcy court determination on the predominate non-core is subject to *de novo* review by this Court;
6. Withdrawal of the reference will avoid unnecessary costs by adjudicating these disputes in a single proceeding in this Court;
7. The Bankruptcy Court has no continuing involvement or interest in the post-plan confirmation relationships between these non-debtor parties;
8. Resolution of these disputes will have no impact on the amount of funds available for distribution to USACM's creditors.

As noted above, Compass has improperly attempted to "remove" the Complaint filed by Movant's in this Court to the Bankruptcy Court under 28 U.S.C. §1452. However, Compass' attempted removal should be stricken by this Court because §1452 does not provide a mechanism to remove a district court action down to bankruptcy court.

## II. FACTUAL BACKGROUND

1. USA Commercial Mortgage Company, defined above as USACM, which sometimes did business under the name "USA Capital", was formed as a Nevada corporation in 1989, and was in the business of underwriting, originating, brokering, funding and servicing short term (typically one year or less) commercial loans primarily secured by residential and commercial developments, on behalf of private investors/direct lenders. See USACM's Chapter 11 Bankruptcy Plan Disclosure Statement, attached as as Exhibit A to the Declaration of Donna Cangelosi, filed contemporaneously herewith (the "Cangelosi Declaration").

2. Movants are all direct lenders/investors in certain investments made through USACM. These investments were in the nature of direct loans to third-party borrowers

1 secured by real property and sometimes improvements, which loans were brokered by  
2 USACM. *See Cangelosi Declaration, Exhibit A.*

3 3. On April 13, 2006, USACM filed a Chapter 11 Petition for bankruptcy in  
4 the Bankruptcy Court for the District of Nevada, Las Vegas, together with four other  
5 entities related to USACM (hereinafter collectively referred to as "USA Bankruptcy  
6 Cases"). *See Cangelosi Declaration, Exhibit A.*

7 4. At the time USACM filed its bankruptcy petition, approximately 3,600  
8 investors were "lenders" in one or more loan originated and serviced by USACM. These  
9 3,600 investors are commonly referred to as "direct lenders." *See Cangelosi Declaration,*  
10 *Exhibit A.*

11 5. The loans brokered by USACM on behalf of Plaintiffs are each evidenced  
12 by a Promissory Note Secured By A Deed Of Trust (respectively the "Note"), which were  
13 executed by third-party borrowers in favor of the Plaintiff (or their predecessor in interest)  
14 and other direct lenders in each loan. All loan documents, including the Notes, expressly  
15 provide that they are governed by Nevada law. *See Cangelosi Declaration, Exhibit A.*

16 6. At the time USACM brokered direct loans, each lender/investor and USACM  
17 entered into various Loan Servicing Agreements pursuant to which USACM would service  
18 the loans it brokered on behalf of Plaintiffs ("Loan Servicing Agreements"). Each  
19 Plaintiff entered into a single Loan Servicing Agreement, which covered every investment  
20 made by each Plaintiff with USACM. All Loan Servicing Agreements are in the same  
21 form. All Loan Servicing Agreements expressly provide that they are governed by Nevada  
22 law. A copy of a Loan Servicing Agreement is attached to the Cangelosi Declaration as  
23 Exhibit B.

24 7. At the time USACM filed its bankruptcy petition, the loan portfolio it was  
25 servicing pursuant to the Loan Servicing Agreements consisted of approximately 115 loans  
26 having a combined outstanding principal balance of approximately \$960 million. Most of  
27 the original direct lenders invested in more than one of the serviced loans, with the being  
28 approximately 3 to 4 loans for each direct lender. *See Cangelosi Declaration, Exhibit A.*

1           8.     On September 22, 2006, USACM filed a *Motion For Order Scheduling An*  
2 *Auction For The Sale Of Certain Assets, Appointing SPCP Group , LLC, As Lead Bidder,*  
3 *and Approving Bid Procedures And Protections* in the Bankruptcy Case, in which it sought  
4 to establish the parameters for the sale of certain assets in the USA Bankruptcy Cases,  
5 primarily consisting of valuable assets of a related Chapter 11 Debtor.

6           9.     On November 8, 2006, the Bankruptcy Court entered an Order: (A)  
7 *Scheduling An Auction For The Sale Of Certain Assets; (B) Appointing SPCP Group, LLC,*  
8 *As Lead Bidder; And (C) Approving Bid Procedures And Protections, Approving Bidding*  
9 *Procedures.* The stalking horse bidder agreed to take on the obligations of USACM under  
10 the Loan Servicing Agreements as part of the sale, but did not attribute any of its initial  
11 bid price to the Agreements.

12           10.    The Bankruptcy Court conducted an auction of various assets of the USA  
13 Bankruptcy Cases on December 7, 2006.

14           11.    Compass was the successful bidder at auction for substantially all of the  
15 assets of USACM and related debtors in exchange for at \$67 Million. The Compass bid  
16 was broken down by an initial bid of \$48 million for the FTDF assets and \$8 million for  
17 the loan servicing rights and fees under the Loan Servicing Agreements ("Purchased  
18 Assets"). The remaining amounts were to be allocated by an over-bid agreement between  
19 FTDF and USCM, which was filed under seal, and a break-up fee of \$1.5 million to the  
20 stalking horse bidder. The sale was expressly conditioned upon confirmation of the  
21 USACM's Chapter 11 Plan of Reorganization.

22           12.    On January 8, 2007, this Court entered an Order confirming the Debtors'  
23 Joint Chapter 11 Plan (the "Confirmation Order"). A copy of the Confirmation Order is  
24 attached to the Cangelosi Declaration as Exhibit C.

25           13.    On February 16, 2007 (the "Closing Date"), the transfer of the Debtors'  
26 assets, including the Loan Servicing Agreements closed and the transfer to Compass was  
27 completed.

28           14.    The Loan Servicing Agreements were purportedly transferred to Compass



1 without any other modification whatsoever. See Cangelosi Declaration, *Exhibit C*.

2 15. On May 9, 2007, the State of Nevada, Division of Mortgage Lending,  
3 entered a formal *Order Imposing Fine And Order To Cease And Desist And Notice of Right*  
4 *To Request Hearing*, pursuant to which Compass was ordered to cease and desist all  
5 mortgage lending/agent activities in Nevada, a copy of which is attached to the Declaration  
6 of Donna Cangelosi as Exhibit D. According to that Order, an investigation by the State  
7 of Nevada revealed that Compass had "engaged in a minimum (of) seven (7) distinct  
8 instances of escrow agency activity in the State of Nevada without a license to do so,  
9 thereby violating NRS 645A.020 and NRS 645A.210." *Id.*

10 16. As detailed in the Complaint filed herein, Movants contend that Compass has  
11 committed numerous violations of Nevada law since taking over as servicer under the Loan  
12 Servicing Agreements, including, but not limited to:

13 a. Compass has refused to disclose any money it is receiving, in violation  
14 of Nevada law. See *Declaration of Donna Cangelosi*.

15 b. Compass is not acting under a valid power of attorney as required by  
16 NRS 645B.330 because the power of attorneys granted by direct lenders to USACM  
17 expired by operation of law when the underlying loans fully matured. At the time the  
18 Loan Servicing Agreements were transferred to Compass, many of the loans in the  
19 USACM loan portfolio were in term default, and others have since gone into term default.  
20 Compass has not obtained a written extension of the expired powers of attorney. See  
21 *Declaration of Donna Cangelosi*.

22 c. In the three months have passed since Compass closed on the asset  
23 purchase transaction, Compass has failed to failed to provide monthly reports as required  
24 by Nevada law and has only generated a total of seven (7) loan status reports. See  
25 *Declaration of Donna Cangelosi*.

26 d. Compass has negotiated with borrowers for its own benefit, and to the  
27 detriment of Direct Lenders, in violation of Nevada law and its fiduciary duties. See  
28 *Declaration of Robert Bender*, filed contemporaneously herewith.

1 e. Compass has taken the position that it is entitled to be paid default  
2 interest and other fees, prior to Direct Lenders being paid principal and interest, which is  
3 in direct conflict with the terms of the promissory notes and other loan documents. *See*  
4 *Email from Compass*, attached to the *Cangelosi Declaration* as Exhibit E.

5 f. Compass has applied principal and interest payments made by  
6 borrowers to pay itself so-called loan origination fees, which is in direct conflict with the  
7 terms of the promissory notes and other loan documents.

8 g. Compass has engaged in reckless conduct, which has subjected  
9 Plaintiffs and other direct lenders to an increased exposure to lender liability lawsuits.

10 h. Compass has refused to process direct lender/borrower settlement  
11 agreements.

12 i. Compass has initiated legal proceedings in 21 loans, on behalf of  
13 direct lenders, without a valid power of attorney, subjecting lenders to legal fees, borrower  
14 defenses and lender liability claims.

15 17. Based on Section 3 of the Loan Servicing Agreements, independent rights  
16 under NAC 645B.073, Nevada agency law, and various acts by Compass, and Compass  
17 alone, Direct Lenders constituting over 51% of the beneficial interests in loans serviced  
18 by Compass have executed written elections to: (1) terminate any rights that Compass may  
19 have to service their various Loan; and (2) to appoint an alternate servicing agent for  
20 loans. Specifically 60% of all outstanding beneficial interests, and 62% of the total  
21 number of direct lenders executed written elections to terminate Compass. The percentage  
22 of beneficial interests voting to terminate Compass on a loan-by-loan basis exceed 96% on  
23 certain loans. *See Cangelosi Declaration*.

24 18. On May 18, 2007, the direct lenders sent Notices of Termination to Compass  
25 and its attorneys, which were delivered on May 21, 2007. *See Cangelosi Declaration*.

26 19. On May 18, 2007, the direct lenders also sent Notices To Borrowers  
27 informing them that Compass had been terminated as loan servicer and directing them to  
28 forward future payments to direct lenders new loan servicer, as permitted in the



1 promissory notes and loan documents between direct lenders and borrowers. See  
2 Cangelosi Declaration.

3 20. On May 21, 2007, Movants filed a *Complaint For Declaratory Relief and*  
4 *Damages* herein, as case No. 07-CV-0224-ECR-VAC. This action seeks declaratory relief  
5 regarding certain post-confirmation rights of direct lenders under the Loan Servicing  
6 Agreements and damages against Compass and other parties, based on their post-  
7 confirmation conduct and actions.

8 21. On May 25, 2007, Compass attempted to "remove" this action to the  
9 Bankruptcy Court by filing a Notice of Removal under 28 U.S.C. § 1452(a).

10 22. On May 25, 2007, Compass also filed an *Emergency Motion of Compass*  
11 *Financial Partners LLC For Order Pursuant To 11 U.S.C. §§ 105 and 1141 Enforcing*  
12 *Confirmation Order And For Civil Contempt Sanctions* a Motion in this Court (the  
13 "Compass Motion"), which sought to enjoin the direct lenders' termination of Compass  
14 and the Loan Servicing Agreements. A copy of the Compass Motion is attached to the  
15 Cangelosi Declaration hereto as Exhibit F.

16 23. On May 31, 2007, the Bankruptcy Court conducted a hearing on the  
17 Compass Motion, at which both the Movants and the Court raised threshold concerns  
18 regarding whether it had subject matter jurisdiction to hear disputes between Movants and  
19 Compass and directed the parties to brief the subject matter jurisdiction issue.

20 24. On June 20, 2007, the Bankruptcy Court held a hearing to determine whether  
21 the disputes between Movants and Compass triggered subject matter jurisdiction. At that  
22 hearing, the Court concluded that, while it may have subject matter jurisdiction over a few  
23 of the disputes between Movants and Compass, those disputes involve substantial non-core  
24 matters over which the Bankruptcy Court only had supplemental jurisdiction. The  
25 Bankruptcy Court held that this dispute would more properly proceed in District Court and  
26 stated that it would enter a formal written Recommendation For Withdrawal of Reference,  
27 to allow the dispute to proceed in District Court.

28 25. On July 3, 2007, the Bankruptcy Court entered a written *Recommendation*

1 *For Withdrawal Of Reference Pursuant To 28 U.S.C. 157(d)*, a copy of which is attached  
 2 hereto as Exhibit A.

### 3 **III.** 4 **ARGUMENT**

5 In pertinent part, 28 U.S.C. § 157(d) provides that "the district court may  
 6 withdraw, in whole or in part, any case or proceeding referred under this section, on its  
 7 own motion or on timely motion of any party, for cause shown." As explained by the  
 8 Ninth Circuit, "in determining whether cause exists, a district court should consider the  
 9 efficient use of judicial resources, delay and costs to the parties, uniformity of bankruptcy  
 10 administration, the prevention of forum shopping, and other related factors." *In re*  
 11 *Security Farms*, 124 F.3d 999, 1008 (9<sup>th</sup> Cir. 1997). In the present case, all relevant  
 12 factors weigh significantly in favor of withdrawing the reference.

#### 13 **A. Withdrawing The Reference Provides The Most Efficient Use Of Judicial** 14 **Resources To Adjudicate The Disputes Between Movants And Compass.**

15 As noted by the Second Circuit, district courts considering whether to withdraw the  
 16 reference should first evaluate whether the claim is core or non-core,<sup>2</sup> since it is upon this  
 17 issue that questions of efficiency and uniformity will turn. *In re Orion Pictures Corp.*, 4  
 18 F.3d 1095, 1101 (2d Cir. 1993). The Second Circuit explained that the fact that a  
 19 bankruptcy court's determination on non-core matters is subject to *de novo* review by the  
 20 district court could lead the latter to conclude that in a given case unnecessary costs could  
 21 be avoided by a single proceeding in the district court. *Id.*

22 The Ninth Circuit applied the same reasoning in *Security Farms*, cited above,  
 23 where the Circuit found case efficiency was enhanced by withdrawing the reference  
 24 because non-core issues predominated the dispute. *Security Farms*, at 1008. There, the  
 25 plaintiffs' claims were non-core claims arising under state law and did not depend on Title

---

26 <sup>2</sup>28 U.S.C. § 157 classifies proceedings as either: (1) core proceedings, which the bankruptcy  
 27 court may hear and adjudicate; or (2) non-core proceedings, which the bankruptcy court may hear but may  
 28 only submit findings of fact and conclusions of law to the district court, which reviews the determinations  
 de novo.

11. Id. at 1008. The Ninth Circuit held that, inasmuch as a bankruptcy court's determinations on non-core matters are subject to *de novo* review by the district court, unnecessary costs could be avoided by a single proceeding in the district court. Id. Citing In re Mann, 907 F.2d 923, 926 (9th Cir. 1990).

Courts within the Ninth Circuit consistently apply these principles. For example, in In re Addison, 240 B.R. 47 (C.D. Cal. 1999), the Court held that because the disputes before it predominated by non-core matters, sufficient cause existed to withdraw the reference. Most notably, the Addison Court concluded that withdrawing the reference for non-core disputes would promote interests of judicial economy. Addison, at 50.

1. Non-Core Matters Predominate The Disputes Between Movants And Compass.

Here, the disputes between Movants and Compass are predominated by non-core matters. Non-core proceedings are those that "do not depend on bankruptcy laws for their existence and that could proceed in any another court..." Security Farms, at 1008. As noted above, the instant dispute primarily raise issues of Nevada state law, and are primarily straight forward contract disputes.

Specifically, the primary issue on the declaratory relief portion of Movant's Complaint is whether Movants have properly exercised contractual and Nevada State Law rights to terminate Compass and the Loan Servicing Agreements. There is no provision of the Bankruptcy Code that is relevant to this dispute. The only relevant law is Nevada State law governing contracts, and specifically Nevada Law governing Loan Servicing Agreements (NRS Chapter 645B and NAC Chapter 645B) and contracts creating agency relationships.

Movant's claims for damages are likewise based on state law, most notably Nevada law establishing claims for breach of contract and breach of fiduciary duty. As can be gleaned from a review of Movant's Complaint, Movants do not seek any relief based on a provision of the Bankruptcy Code. Specifically, Movants' claims are based upon:

///

1 a. Compass Is Unlawfully Holding Itself Out As Direct Lenders' Agent  
 2 Without A Valid Power of Attorney.

3 As asserted in Movant's Complaint as a basis for damages and declaratory relief,  
 4 Compass has unlawfully held itself out as Direct Lenders' Agent in violation of Nevada  
 5 State law. Section 13 of the Loan Servicing Agreements specifically provides:

6 This Agreement shall be construed in accordance with the laws of the State  
 7 of Nevada, without regard to conflict of laws or rules thereof, and the  
 obligations, rights and remedies of the parties hereunder shall be determined  
 in accordance with such laws.

8 Under Nevada Law, when a mortgage broker acts as a servicing agent, it is indeed  
 9 acting as the agent of the lenders. *See generally, Young v. Nevada Title Company*, 103  
 10 Nev. 436, 439, 744 P.2d 902 (1987). "An agent owes to the principal the highest duty of  
 11 fidelity, loyalty and honesty in the performance of the duties by the agent on behalf of the  
 12 principal." *LeMon v. Landers*, 81 Nev. 329, 402 P.2d 648 (1965). A mortgage broker "is  
 13 charged with the duty of fullest disclosure of all material facts concerning the transaction  
 14 that might affect the principal's decision." *Holland Realty Investment Co. v. Nevada*, 84  
 15 Nev. 91, 97, 436 P.2d 422 (1968); Accord, *Jory v. Bennight*, 91 Nev. 763, 542 P.2d 1400  
 16 (1975).

17 Pursuant to NRS 645B.330, a mortgage broker/agent must act on behalf of direct  
 18 lenders pursuant to a valid power of attorney, approved by the State of Nevada. In this  
 19 regard, Plaintiff executed a power of attorney in favor of USACM when making  
 20 investments/loans. NRS 645B.330 requires that the power of attorney "Expressly provide  
 21 that the power of attorney is effective only for the term of the specific loan unless the  
 22 mortgage broker obtains written approval from the private investor to extend the term of  
 23 the power of attorney..." and "a power of attorney which designates a mortgage broker  
 24 or mortgage agent as the attorney-in-fact or the agent of a private investor and which  
 25 violates the provisions of this section is void and must not be given effect with regard to  
 26 any act or transaction that occurs on or after October 1, 1999, whether or not the power  
 27 of attorney is or has been executed by the private investor before, on or after October 1,  
 28 1999." The Loan Servicing Agreements in this case codify NRS 645B.330 and expressly

1 provide that the powers of attorney expire on the maturity date of each related loan.

2 Here, numerous loans have matured. Compass has not obtained a written extension  
3 of any of Powers of Attorney as required by NRS 645B.330. Thus, as a result of the term  
4 maturity of various loans in the USACM portfolio, Compass no longer has a valid power  
5 of attorney to act on behalf of direct lenders as required under NRS 645B.330.

6 Despite the fact no valid power of attorney exists that authorizes Compass to act on  
7 behalf of Plaintiffs and other direct lenders, Compass continues to hold itself out as a  
8 representative/agent of Plaintiffs (and other direct lenders) to borrowers, title companies  
9 and others. Such conduct gave direct lenders further cause to terminate Compass as the  
10 loan servicer.

11 b. Compass Has Adopted A Position Unprecedented In The Industry  
12 That It Is Entitled To Receive Default Interest And Late Fees Before  
Direct Lenders Receive Principal and Interest.

13 As asserted in Movants' Complaint, since taking over under the Loan Servicing  
14 Agreements, Compass adopted a strategy to extract value from the collateral pledged by  
15 third-party borrowers to direct lenders, by attempting to deduct unpaid default interest, late  
16 fees, extension fees, and other undisclosed fees, from the collateral proceeds before  
17 remitting amounts due to Plaintiffs and other direct lenders, which is in direct conflict with  
18 the loan documentation (Notes, deeds of trust and loan agreements), the Loan Servicing  
19 Agreements, the intent of the parties to the loans and various related agreements, the  
20 historical practices of USACM and long established lending industry standards and  
21 practices.

22 As set forth in the April 24, 2007, email from Compass to LPG members, attached  
23 to the *Declaration of Donna Cangelosi* as Exhibit F, Compass maintains the Debtors' Plan  
24 gave them the first priority to receive default interest from borrowers payments, and  
25 despite the fact the loan documents give the direct lenders the right to dictate the priority  
26 of payment applications, despite the fact that the Court repeatedly said the Loan Servicing  
27 Agreements were not modified. Specifically, in that email Compass states:

28 Principal gets repaid last, hence our point about a shortfall. I assumed

1 Direct Lenders were familiar with the Reorganization Plan they approved  
2 that provides for that, but you make a point I will be happy to consider for  
future Loan Status Reports. - Mark Olson

3 Compass' strategy and approach for servicing the Loans has created a conflict of interest  
4 between Compass and direct lenders, to whom Compass owes fiduciary duties. This gave  
5 direct lenders further cause to terminate Compass based on its own post-confirmation  
6 conduct.

7 c. Compass Has Failed To Make Disclosures To Direct Lenders That  
8 Are Required Under Nevada Law.

9 Pursuant to NRS 645B.185, a mortgage broker/agent is required to provide each  
10 investor a Mortgage Investment Disclosure Form, approved by the Nevada Mortgage  
11 Lending Division. As detailed in the Mortgage Investment Disclosure Form, a mortgage  
broker/agent operating in Nevada is required to inform investors that:

- 12 1. "Before you invest in a promissory note by an interest in real  
13 property, you should know... the knowledge, experience and integrity  
14 of the mortgage broker with whom you are dealing."
- 15 2. "You are entitled to receive information regarding the mortgage  
16 broker you are dealing with" more specifically the most recent  
17 financial statements.
- 18 3. "You have a right to ascertain from the Division of Mortgage  
19 Lending the results of any investigation against the mortgage broker"
- 20 4. "In many cases, including those cases where the investments consist  
21 of "fractionalized" interests, the loan requires servicing by an  
22 authorized agent... The mortgage broker with whom you are dealing  
23 is authorized by Nevada law to act as the servicing agent."
- 24 5. "A Mortgage Broker performing loan servicing has an obligation to  
25 account to the borrower and every investor for money collected and  
26 disbursed in the exercise of that function".
- 27 6. When the borrower on a mortgage loan fails to make required  
28 payments, the actions and investor can take, or that a servicing agent  
can take on behalf of an investor, are determined by provisions of  
Nevada Law and the documents and instruments evidencing the  
mortgage loan.

Compass has failed and refused to provide direct lenders the information required in the  
Mortgage Investment Disclosure Form, which established further cause for direct lenders  
to terminate Compass. *See Declaration of Donna Cangelosi.*



d. Compass Has Been Ordered By The Nevada Division of Mortgage Lending To Cease And Desist Escrow Activities In Nevada.

The fact the Nevada Division of Mortgage Lending has formally ordered Compass to cease and desist certain activities it is required to perform under the Loan Servicing Agreement also establishes cause for direct lenders to terminate the Agreements for reasons entirely unrelated to the pre-petition conduct of USACM. According to the State of Nevada, an investigation revealed that Compass had "engaged in a minimum (of) seven (7) distinct instances of escrow agency activity in the State of Nevada without a license to do so, thereby violating NRS 645A.020 and NRS 645A.210." *See Exhibit C to Cangelosi Declaration*, p. 8.

Compass has since moved to New York in an attempt to escape regulation by the State of Nevada. However, Compass still violates the Cease and Desist Order by servicing loans for Nevada residents, who make up a large contingency of the Direct Lenders. Moreover, because Section 13 of the Loan Servicing Agreements expressly provides that Compass' duties and obligations are governed by Nevada Law, Compass cannot avoid complying with Nevada Law by relocating to New York.

2. Withdrawing The Reference Will Promote Judicial Economy And Will Minimize Delay And Costs To The Parties.

As in the Security Farms case, withdrawal of the reference here will promote the interests of judicial economy. If the reference is not withdrawn, both the Bankruptcy Court and this Court will ultimately hear the bulk of this dispute. As noted above and by the Bankruptcy Court, non-core matters predominate these disputes. As to all non-core matters, this Court must review all of the Bankruptcy Court's findings of fact and conclusions of law de novo. Security Farms, at 1008. Thus, absent withdrawal of the reference, the predominate non-core matters will necessarily be decided in both the Bankruptcy Court and this Court. As held by the Ninth Circuit in Security Farms, this process is not an efficient use of judicial resources and does not promote judicial economy policies. *Id.* To the contrary, under circumstances such as this, judicial economy and

1 efficiency are promoted by withdrawing the reference. Id.

2 It is also significant that this is a dispute between two non-debtors. Debtor USACM  
3 is not a party to this dispute. Thus, it makes little sense for the Bankruptcy Court to  
4 adjudicate the primarily state law dispute between two non-debtor parties.

5 Finally, withdrawal of the reference will reduce delay and costs to the parties, as  
6 they will not be subject to an automatic additional level of de novo review. It will be far  
7 more expeditious and cost effective to have the merits adjudicated in only one court; this  
8 District Court.

9  
10 **B. Withdrawal Of The Reference Does Not Encourage Or Reward Forum Shopping.**

11 As Movants filed their action herein prior to Compass seeking to bring the dispute  
12 before the Bankruptcy Court, it seems Compass is the only party attempting to forum shop.  
13 Nevertheless, the Security Farms court soundly rejected any claim that withdrawal of the  
14 reference under the current circumstances encourages forum shopping. Security Farms,  
15 at 1008. Without regard to withdrawal, the bankruptcy court's order remanding plaintiff's  
16 non-core, state law claims inevitably was subject to the approval of the district court. *See*  
17 *28 U.S.C. § 157(c)(1)*. Based on these conclusions, the Ninth Circuit held withdrawal of  
18 the reference does not implicate forum shopping. To the contrary, it brings the dispute  
19 before the Court that ultimately has the only authority to finally adjudicate the disputes.

20  
21 **C. The Disputes Between Movants And Compass Have No Close Nexus To Debtor USACM, Its Bankruptcy Case Or Its Chapter 11 Plan.**

22 The disputes at bar ultimately boil down to whether Movants properly terminated  
23 Compass based on: (1) post-confirmation and post-closing contractual and state law rights;  
24 and (2) post-confirmation and post-closing acts of Compass, and Compass alone. This  
25 dispute arises from the ongoing post-confirmation contractual relationship between direct  
26 lenders and Compass. The only relevant bankruptcy debtor, USACM, is not a party to  
27 this dispute.

28 It is impossible that the dispute between Movants and Compass would in anyway



1 alter the USACM's rights, liabilities, options, or freedom of action. Indeed, USACM has  
2 not reorganized and is no longer in business. Thus, the dispute between direct lenders and  
3 Compass cannot interfere with Debtors' "reorganized business."

4 The parties are seeking a determination of the post-transfer rights of non-debtors  
5 (Compass and Movants), which do not involve the debtor or estate assets. This issue was  
6 addressed by the Ninth Circuit in In re Federal Shopping Way, Inc., 717 F.2d 1264 (9<sup>th</sup>  
7 Cir. 1983). There, several pre-petition investors entered into contracts with the debtor to  
8 acquire fractional interests in real estate known as the NW 20 Property. The investors  
9 made substantial payments to the debtor pursuant to the contracts, but the debtor never  
10 delivered deeds to them. After filing its bankruptcy petition, the debtor's estate sold the  
11 NW 20 Property to a third party "free and clear of all liens and encumbrances."  
12 Thereafter, the factional interest investors, as an unincorporated association, filed a  
13 complaint in state court seeking to quiet title to the NW 20 Property in their favor.

14 Identical to the actions of Compass, the purchaser in Federal ultimately went to the  
15 bankruptcy court seeking a permanent injunction against the investors' quiet title action.  
16 Federal, at 1268. The purchasers alleged that the injunction was necessary to protect and  
17 effectuate the bankruptcy court's prior orders. Id. at 1269. The Ninth Circuit found this  
18 argument failed because the purchaser never sought or acquired a quiet title order from the  
19 bankruptcy court. Id. at 1270. In this regard, the Court explained its order confirming  
20 the sale "did not purport to convey more than the trustee had." Id.

21 The Ninth Circuit went on to explain that where property has been transferred out  
22 of the bankruptcy estate, and the debtor claims no interest in the property whatsoever, the  
23 bankruptcy court is equally devoid of jurisdiction to adjudicate conflicting claims to the  
24 property. Federal, at 1272. In such situations, the third party claimant has the right to  
25 have the merits of his claim passed on in a plenary suit in a court that independently has  
26 jurisdiction over the subject matter. Id., Citing Cline v. Kaplan, 309 U.S. 478, 481  
27 (1940).

28

1 **D. Compass' "Notice Of Removal" of the District Court Action Is Improper And**  
 2 **Should Be Stricken From The Record In This Case.**

3 Compass has improperly attempted to "remove" the Movants' Complaint filed herin  
 4 to the Bankruptcy Court under 28 U.S.C. § 1452(a). As acknowledged by the only Court  
 5 within the Ninth Circuit to address this issue, such a removal "defies logic and common  
 6 sense." See In re Mitchell, 206 B.R. 204, 209-212 (Bankr. D. Cal. 1997). *Mitchell*  
 7 involved an attempted § 1452 removal of an action filed United States District Court to the  
 8 bankruptcy court sitting in the same district, which was in essence the same court,  
 9 according to *Mitchell*. The *Mitchell Court* held that "as a matter of logic and common  
 10 sense, it would not seem to be possible to 'remove' a lawsuit to the very court where the  
 11 lawsuit is already pending. Removal, both under the nonbankruptcy removal statute, 28  
 12 U.S.C. § 1441-1448, and under the bankruptcy removal statute, 28 U.S.C. § 1452,  
 13 involves moving the lawsuit from the court where it was originally brought--which is  
 14 usually a state court--to a federal district court. It seems to be a tautology to talk about  
 15 'removing' an action already pending in a federal district court to that same federal district  
 16 court where the action is already pending." Mitchell, at 209-10.

17 28 U.S.C. § 1452(a) speaks of removing a proceeding "to district court". It violates  
 18 the plain language of 28 U.S.C. § 1452(a) to say that an action can be removed "to district  
 19 court" when it is already pending in district court, because the words "to district court" by  
 20 necessity involve the concept of bringing the action to district court from some other  
 21 forum.

22 The *Mitchell Court* held "that proper procedure for a party to use to request a  
 23 district court to transfer a lawsuit pending in that district court to a bankruptcy judge of the  
 24 same district is for the party seeking the transfer to move the district court to refer that  
 25 lawsuit to the bankruptcy court for further handling." Mitchell, at 210, citing Thomas  
 26 Steel Corp. v. Bethlehem Rebar Indus., 101 Bankr. 16, 19 (Bankr. N.D. Ill. 1989); In re  
 27 Watson-Mahaney, Inc., 70 Bankr. 578, 581 (Bankr. N.D. Ill. 1987). The *Mitchell Court*  
 28 expressly held "that 28 U.S.C. § 1452(a) cannot be used to remove a lawsuit pending in

1 federal district court to the same district court where the lawsuit is already pending." *Id.*  
 2 The Court explained that "such a reading of Section 1452(a) gives meaning to all parts of  
 3 that section, and avoids the logically idiotic result of claiming that a lawsuit can be  
 4 removed from the district court where it is already pending to that very same court." *Id.*  
 5 at 211.

6 Compass has attempted to do exactly what was prohibited in *Mitchell*, namely  
 7 attempting to use § 1452(a) to remove a case from a District Court for the District of  
 8 Nevada to the same District Court sitting as a Bankruptcy Court for the District of Nevada.  
 9 This is not a proper procedural use of § 1452(a) and, therefore, Compass' Notice of  
 10 Removal of the District Court Action filed in this Court should be stricken from the record  
 11 in this case and any "removal" should be nullified. If Compass has grounds for the  
 12 District Court to refer Movants' Complaint to the Bankruptcy Court, it must pursue its  
 13 goals in the District Court through a motion to refer the case to this Court.

#### 14 IV. 15 CONCLUSION

16 For the cause articulated above, and based on the recommendation of the  
 17 Bankruptcy Court, Movants respectfully submit that withdrawal of the reference is proper  
 18 in this case. As such, this Court should enter and order, pursuant to which the reference  
 19 is withdrawn as to all pending disputes between Movants and Compass, including  
 20 Movants' Complaint, and directing the parties to pursue such claims in this Court.

21 DATED this 3rd day of July, 2007.

22 LAW OFFICES OF ALAN R. SMITH

23 By: /s/ Kevin A. Darby, Esq.

24 ALAN R. SMITH, ESQ.  
 25 KEVIN A. DARBY, ESQ.  
 26 Attorney for Plaintiffs  
 27  
 28

## Exhibit "A"

Case: 06-10725-lbr Doc #: 4113 Filed: 07/03/2007 Page: 1 of 2



Entered on Docket  
July 03, 2007

A handwritten signature in black ink, appearing to read "Linda B. Riegler".

Hon. Linda B. Riegler  
United States Bankruptcy Judge

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Attorney for Lenders Protection Group  
and Donna Cangelosi

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

—ooOoo—

In Re:  
USA COMMERCIAL MORTGAGE  
COMPANY, et al.  
  
Debtors.

Case Nos.:  
BK-S-06-10725-LBR  
BK-S-06-10726-LBR  
BK-S-06-10727-LBR  
BK-S-06-10728-LBR  
BK-S-06-10729-LBR

JOINTLY ADMINISTERED  
Chapter 11

Affects:  
☐ All Debtors  
☒ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

RECOMMENDATION FOR  
WITHDRAWAL OF REFERENCE  
PURSUANT TO 28 U.S.C. § 157(d)

Hearing Date: June 20, 2007  
Hearing Time: 10:30 a.m.

This Court, having held a hearing on June 20, 2007, to determine whether it has subject matter jurisdiction to adjudicate various disputes between Compass USA SPE, LLC and Compass Financial Partners (collectively "Compass") and various direct lenders/investors in

Law Offices of  
ALAN R. SMITH  
505 Ridge Street  
Reno, Nevada 89501  
(775) 786-4579

H:\LPG\Order WD Ref 062207-mhm.wpd

EXHIBIT "A"

Case: 06-10725-lbr Doc #: 4113 Filed: 07/03/2007 Page: 2 of 2

1 Debtor USA Commercial Mortgage Company, including Donna Cangelosi, the Lenders  
 2 Protection Group and numerous direct lender Nevada limited liability companies (all such  
 3 direct lenders shall collectively be referred to as the "Direct Lenders"), as presented to this  
 4 Court in:

- 5 (a) the *Emergency Motion Of Compass Financial Partners LLC For Order*  
 6 *Pursuant To 11 U.S.C. §§ 105 And 1141 Enforcing Confirmation Order And*  
 7 *For Civil Contempt* (the "Compass Motion") filed on May 25, 2007; and  
 8 (b) the *Complaint For Declaratory Relief And Damages*, filed on May 21, 2007,  
 9 by various Direct Lenders against Compass in the United States District Court  
 10 For The District Of Nevada as Case No. 07-CV-0224-ECR-VAC (the "Direct  
 11 Lenders' Action"), which was purportedly "removed" to this Court by Compass  
 12 on May 25, 2007;

13 and, this Court having found (pursuant to a separate order) that it has subject matter  
 14 jurisdiction pursuant to 28 U.S.C. § 1334 to adjudicate disputes between Compass and Direct  
 15 Lenders as presented in the Compass Motion and the Direct Lenders' Action, this Court  
 16 further finds that these disputes are appropriate for a withdrawal of the reference pursuant to  
 17 28 U.S.C. § 157(d), and therefore:

18 This Court hereby recommends that, pursuant to 28 U.S.C. § 157(d), the United  
 19 States District Court For The District Of Nevada withdraw the reference of all disputes  
 20 between Compass and Direct Lenders to this Court, including the Compass Motion and the  
 21 Direct Lenders Action, and that all such disputes between Compass and Direct Lenders be  
 22 heard and adjudicated by the District Court.

23 SUBMITTED by:  
 24 LAW OFFICES OF ALAN R. SMITH

25 By: /s/ Alan R. Smith  
 26 ALAN R. SMITH, ESQ.  
 Attorneys for Lenders Protection Group  
 and Donna Cangelosi

27 ###

28

# Exhibit "B"

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Entered on Docket  
June 08, 2007

Hon. Linda B. Riegler  
United States Bankruptcy Judge

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Counsel for Compass Financial Partners LLC

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

In re:  
USA COMMERCIAL MORTGAGE COMPANY,  
Debtor.

In re:  
USA CAPITAL REALTY ADVISORS, LLC,  
Debtor.

In re:  
USA CAPITAL DIVERSIFIED TRUST DEED  
FUND, LLC,  
Debtor.

In re:  
USA CAPITAL FIRST TRUST DEED FUND,  
LLC,  
Debtor.

In re:  
USA SECURITIES, LLC,  
Debtor.

## Affects:

- ☐ All Debtors  
☒ USA Commercial Mortgage Company  
☐ USA Securities, LLC  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA First Trust Deed Fund, LLC

Case No. BK-S-06-10725 LBR  
Case No. BK-S-06-10726 LBR  
Case No. BK-S-06-10727 LBR  
Case No. BK-S-06-10728 LBR  
Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under  
Case No. BK-S-06-10725 LBR

**ORDER RE: EMERGENCY MOTION OF  
COMPASS FINANCIAL PARTNERS LLC  
FOR ORDER PURSUANT TO 11 U.S.C. §§  
105 AND 1141 ENFORCING  
CONFIRMATION ORDER AND  
FOR CIVIL CONTEMPT SANCTIONS**

Date: May 31, 2007  
Time: 2:30 p.m.

BullivantHouserBailey PC  
3980 Howard Hughes Pkwy., Suite. 550  
Las Vegas, NV 89169  
Telephone: (702) 650-6565  
Facsimile: (702) 650-2995



Case 2:07-cv-00892-RCJ-GWF Document 14 Filed 07/19/2007 Page 32 of 35  
 Case: 06-10725-lbr Doc #: 3927 Filed: 06/08/2007 Page: 2 of 5

1 The Court conducted a hearing, pursuant to its Order Shortening Time, on May 31, 2007  
 2 on the Motion of Compass Financial Partners LLC for Order Pursuant to 11 U.S.C. §§ 105 and  
 3 1141 Enforcing Confirmation Order and for Civil Contempt Sanctions (the "Motion"), which  
 4 was filed by Compass Financial Partners LLC ("Compass") on May 25, 2007. Appearances of  
 5 counsel were noted on the record at the hearing.

6 The Court having determined that the parties should submit additional briefs on the  
 7 issues raised in the Motion and the Opposition thereto filed by the Lender Protection Group on  
 8 May 30, 2007, and having determined that the status quo as it existed on May 15, 2007 should  
 9 be maintained pending further order of this Court, with a hearing on such issues scheduled to be  
 10 conducted on June 20, 2007, and for good cause appearing,

11 IT IS HEREBY ORDERED that, pending further order of this Court, (i) the status quo as  
 12 of May 15, 2007 is hereby preserved such that Compass shall be and remain the loan servicer  
 13 with respect to all loans for which it acquired servicing rights pursuant to that certain Asset  
 14 Purchase Agreement dated December 8, 2006, approved by Order of this Court entered January  
 15 8, 2007 (collectively, the "Loans"); and

16 IT IS FURTHER ORDERED that, pending further order of this Court, all amounts due  
 17 and owing under or in connection with the Loans (the "Payments") shall continue to be paid  
 18 directly to Compass; and

19 IT IS FURTHER ORDERED that, pending further order of this Court, Compass shall be  
 20 entitled to deduct and retain from Payments received the amount of its accrued and unpaid  
 21 servicing fees then due to Compass, provided, however, that any amounts relating to default  
 22 interest, late charges, or other fees shall be held in the Direct Lender remittance account  
 23 established and maintained by Compass, and provided, further, that notwithstanding the above,  
 24 in the event Compass receives Payments from a borrower in respect of a Loan (i) in which  
 25 Compass holds 100% of the loan participation interests, or (ii) which satisfy in full all  
 26 obligations due and owing under the governing loan documents (including default interest, late  
 27 charges, and other fees), then Compass shall be permitted to deduct and retain from such  
 28 Payments received any amounts relating to default interest, late charges, and other fees; and

BullivantHouserBailey PC  
 3980 Howard Hughes Pkwy., Suite. 550  
 Las Vegas, NV 89169  
 Telephone: (702) 650-6565  
 Facsimile: (702) 650-2995

1 IT IS FURTHER ORDERED that in the event the Lenders Protection Group holds 100%  
2 of the loan participation interests in a Loan, they shall have the right to direct Compass not to  
3 take any further action to pursue recovery from borrowers of outstanding amounts due with  
4 respect to such Loans; and

5 IT IS FURTHER ORDERED that any attempted termination or replacement of Compass  
6 as loan servicer with respect to a Loan shall not be effective pending further order of this Court.

7 Submitted by:

8 CADWALADER WICKERSHAM & TAFT  
9 -and-  
10 MILBANK, TWEED, HADLEY & McCLOY, LLP  
11 -and-  
12 BULLIVANT HOUSER BAILEY PC

13 By: /s/ Georganne W. Bradley  
14 Georganne W. Bradley, Esq.

15 *Attorneys for Compass Financial Partners LLC*

16 Approved/Disapproved by:

17 LAW OFFICES OF ALAN R. SMITH

18 By:   
19 Alan R. Smith

20 *Attorneys for Lenders Protection Group*

21 Approved/Disapproved by:

22 OFFICE OF THE U.S. TRUSTEE

23 By: \_\_\_\_\_  
24 August B. Landis, Esq.

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Case: 06-10725-lbr Doc #: 3927 Filed: 06/08/2007 Page: 4 of 5

1 IT IS FURTHER ORDERED that in the event the Lenders Protection Group holds 100%  
2 of the loan participation interests in a Loan, they shall have the right to direct Compass not to  
3 take any further action to pursue recovery from borrowers of outstanding amounts due with  
4 respect to such Loans; and

5 IT IS FURTHER ORDERED that any attempted termination or replacement of Compass  
6 as loan servicer with respect to a Loan shall not be effective pending further order of this Court.

7 Submitted by:

8 CADWALADER WICKERSHAM & TAFT  
9 -and-  
10 MILLBANK, TWEED, HADLEY & McCLOY, LLP  
11 -and-  
12 BULLIVANT HOUSER BAILEY PC

13 By: /s/ Georganne W. Bradley  
14 Georganne W. Bradley, Esq.  
15 *Attorneys for Compass Financial Partners LLC*

16 Approved/Disapproved by:

17 LAW OFFICES OF ALAN R. SMITH

18 By: Alan R. Smith.  
19 *Attorneys for Lenders Protection Group*

20 ~~Approved/Disapproved by:~~

21 OFFICE OF THE U.S. TRUSTEE

22 By: [Signature]  
23 August M. Landis, Esq.

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1 In accordance with Local Rule 9021, the undersigned certifies:

2 \_\_\_\_\_ The court waived the requirements of LR 9021.

3 \_\_\_\_\_ No parties appeared or filed written objections, and there is no trustee  
4 appointed in the case.

5 ☒ I have delivered a copy of this proposed order to all counsel who  
6 appeared at the hearing, any unrepresented parties who appeared at the hearing, and any  
7 trustee appointed in this case, and each has approved or disapproved the order, or failed  
8 to respond, as indicated below:

9 Alan R. Smith, Esq. : 6/7/07 Approved By Kevin Darby, Esq.

10 Office of U.S. Trustee: 6/7/07 Approved By August Landis

11 BULLIVANT HOUSER BAILEY P.C.

12 By: Georganne W. Bradley  
13 Georganne W. Bradley, Esq.

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**Bradley, Georganne**

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**From:** cmecf@nvd.uscourts.gov  
**Sent:** Thursday, July 19, 2007 5:11 PM  
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**United States District Court**

**District of Nevada**

**Notice of Electronic Filing**

The following transaction was entered by Smith, Alan on 7/19/2007 at 5:10 PM PDT and filed on 7/19/2007

**Case Name:** In Re: USA Commercial Mortgage Company

**Case Number:** 2:07-cv-892

**Filer:** The Lenders Protection Group  
Plaintiff Direct Lenders  
Donna Cangelosi

**Document Number:** 14

**Docket Text:**

RESPONSE to filed by Interested Parties The Lenders Protection Group, Plaintiff Direct Lenders, Donna Cangelosi. *CONSENT TO WITHDRAWAL OF THE REFERENCE AND REQUEST TO SET EXPEDITED HEARING TO DETERMINE WHETHER THE BANKRUPTCY COURT'S TEMPORARY STANDSTILL ORDER IN FAVOR OF COMPASS SHOULD BE CONVERTED TO A PRELIMINARY INJUNCTION AND TO SET EXPEDITED BRIEFING SCHEDULE* Replies due by 8/2/2007. (Smith, Alan)

**2:07-cv-892 Notice has been electronically mailed to:**

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